

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

|                                  |   |                           |
|----------------------------------|---|---------------------------|
| <b>UNITED STATES OF AMERICA,</b> | ) | <b>CASE NO. 8:10CR164</b> |
|                                  | ) |                           |
| <b>Plaintiff,</b>                | ) |                           |
|                                  | ) |                           |
| <b>vs.</b>                       | ) | <b>TENTATIVE FINDINGS</b> |
|                                  | ) |                           |
| <b>MIGUEL A. CASTANEDA,</b>      | ) |                           |
|                                  | ) |                           |
| <b>Defendant.</b>                | ) |                           |

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 78).<sup>1</sup> The government adopted the PSR (Filing No. 75). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the criminal history points assessed in ¶¶ 45 and 46 of the PSR based on overstatement of his criminal history category and because the prior convictions are “too old.”

Overstatement of criminal history is not a proper basis for objection and may be raised in a downward departure motion under U.S.S.G. § 4A1.3 depending on the parties’ agreement regarding the raising of such motions. The objection is considered as a motion for downward departure and will be briefly heard at sentencing.

Under the sentencing guidelines, the prior convictions are not “too old” and are within the required 10 years prior to the Defendant’s involvement in the offense. U.S.S.G. §§ 4A1.1(c) & 4A1.2(e)(2).

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<sup>1</sup>It appears that the objections were not raised with the probation officer under ¶ 4 of the sentencing schedule. Nevertheless, the objections will be briefly discussed.

IT IS ORDERED:

1. The Defendant's objections to the PSR (Filing No. 78) are denied;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;
4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and
5. The Defendant's motion for downward departure (Filing No. 78) will be heard at sentencing.

DATED this 27<sup>th</sup> day of September, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge